



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH, AT NAGPUR.**

Criminal Application (APL) No. 525 of 2023

Kamalkumar S/o Shivkishan Agarwal,
Age 48 years, Occ :- Business,
R/o 918-919, Shiv Villa,
Deshpande Layout, Wardhaman Nagar,
Nagpur.
through his authorized power of attorney
Shri Ashok S/o Dajiba Patil,
aged about 55 years,
R/o Kharbi, Nagpur.

... Applicant

... Versus ...

Additional
address of
respondent
no. 1 added
as per
Court's order
dtd. 19-6-2023

(1) Shri Umesh Mishra,
Aged about major, Occ-Business
Resident of 109, Foreshore Road,
Haora Corporation, Haora
West Bengal-711102.

Additional
address of
respondent
no. 2 added
as per
Court's order
dtd. 19-6-2023

(2) Shri Mahesh S/o. Nagendra Mishra,
Age : 45 years, Occ-Business,
Both R/o Bishop Wallers S Ave
CIT Colony, Mylapore Chennai,
Tamil Nadu-600 004.
Resident of Sutharapara Post,
Sutharapara, Aliapur, Ram Nagar,
Allapur, Ambedkar Nagar,
Uttar Pradesh-224181

... Non-Applicants

Mr. S. S. Dewani, Advocate for the applicant
Mr. M. V. Rai, Advocate for the non-applicants

CORAM : ANIL L. PANSARE J.

DATED : 11-9-2023

ORAL JUDGMENT

Rule. Rule made returnable forthwith. With consent, the application is heard finally.

2. Learned 2nd Addl. Chief Judicial Magistrate (Special Court-138), Nagpur by order dated 29-9-2022 in Summary Criminal Case No. 26634/2019 was pleased to allow the application, Exhibit 15 filed by the applicant (original complainant) under Section 143-A of the Negotiable Instruments Act (N.I. Act) and has directed the original accused/non-applicants to deposit 20% of the cheque amount. This order was challenged by the non-applicants before the Sessions Court in Criminal Revision No. 315/2022. By the impugned order dated 27-2-2023, the learned Sessions Court has allowed the criminal revision and has set aside the order passed by the learned Additional Chief Judicial Magistrate, on the ground that the application under Section 143-A of the N.I. Act can only be entertained, once the accused pleads not guilty to the accusations made in the complaint and not prior thereto.

3. Learned counsel for the applicant has invited my attention to the order dated 7-7-2023 passed by the Hon'ble Supreme Court in ***Criminal Appeal No. 1807/2023 (Pawan Bhasin Vs. State of U.P. and***

anr.). The Apex Court has held that application under Section 143A(1)(a) could be entertained only where the accused “pleads not guilty” of the accusation made in the complaint.

4. Learned counsel for the applicant fairly submits that learned Additional Chief Judicial Magistrate could not have granted interim compensation prior to the accused pleading not guilty. He however, submits, by relying upon the case of **Pawan Bhasin Vs. State of U.P. and anr.** (*supra*) that the option that was available with the learned Additional Chief Judicial Magistrate was to postpone the hearing on the application under Section 143-A of the N.I.Act. The Additional Chief Judicial Magistrate has, however, allowed the application. In the circumstances, learned counsel submits that the revisional Court ought not to have set aside the impugned order but ought to have directed the learned Additional Chief Judicial Magistrate to entertain the application subsequent to the accused not pleading guilty to the accusations. Accordingly, he makes a request to restore the application on the file by setting aside the order passed by the revisional Court.

5. Learned counsel for the non-applicants has opposed the relief of restoration of application on the ground that the applicant is at liberty to file fresh application.

6. Admittedly, the applicant has an option of filing fresh application. Further, the request made by the applicant before this Court to restore application on the file pending before the Additional Chief Judicial Magistrate ought to have been made before the Sessions Court. It cannot be, therefore, said that the Sessions Court has committed any error.

7. Nonetheless, the request now made can be considered, since no prejudice will be caused to the non-applicant and further the repetition of filing application could be avoided by adopting the pragmatic approach. In view thereof, following order is passed.

- (i) Criminal application is partly allowed.
- (ii) Order dated 27-2-2023 passed by Additional Sessions Judge-16, Nagpur below Exhibit 1 in Criminal Revision No. 315/2022 is upheld. The application, Exhibit 15, however, is remanded back and stands restored on the file of 2nd Addl. Chief Judicial Magistrate (Special Court-138), Nagpur.
- (iii) 2nd Addl. Chief Judicial Magistrate (Special Court-138), Nagpur shall consider the application, Exhibit 15 afresh once original accused pleads not guilty to the accusation.

8. The criminal application is disposed of in above terms.

(Anil L. Pansare, J.)

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